



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

September 1, 2004

Ref: 8ENF-W-NP

CERTIFIED MAIL # 7003-2260-0001-7779-1305
RETURN RECEIPT REQUESTED

Abel L. Moreno, Acting Director of Public Works & Utilities
City of Westminster
Public Works & Utilities
4800 West 92nd Avenue
Westminster, Colorado 80031

Re: Administrative Order under the
Clean Water Act 33 U.S.C. § 309(a)

Dear Mr. Moreno:

Enclosed is a United States Environmental Protection Agency Region 8 ("EPA") administrative order ("Order") issued to the City of Westminster and the Big Dry Creek Reclamation Plant. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "Act"). The authority for such action is provided to EPA under section 309(a)(3) and 308 of the Act, 33 U.S.C. § 1319(a)(3) and 33 U.S.C. § 1318.

The Order describes the actions necessary for the City of Westminster to achieve compliance with the Act. Furthermore, the Order requires you to notify EPA in writing within ten (10) days whether you intend to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any Orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the Act or with an Order issued pursuant to the Act (33 U.S.C. § 1368).

Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in the U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City of Westminster's compliance with the Act, the most knowledgeable people on my staff regarding these matters are Aaron Urdiales, Water Technical Enforcement, at (303) 312-6844, and Marc Weiner, Enforcement Attorney, at (303) 312-6913.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Administrative Order
General Biosolids Permit
Statement of Certification

cc: Rick Koplitz (w/enclosures)
Dave Akers, CDHPE (w/enclosures)
Wes Carr, CDHPE (w/enclosures)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:

City of Westminster
Department of Public Works & Utilities
4800 West 92nd Avenue
Westminster, CO 80031

Respondent.

ORDER FOR COMPLIANCE

DOCKET NO.: CWA-08-2004-0066

LEGAL AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) and 308 of the Federal Water Pollution Control Act (Act), 33 U.S.C. § 1319(a)(3) & 33 U.S.C. § 1318, which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, 402, and/or 405 of the Act, or of any permit condition or limitation implementing those sections. This authority has been properly delegated to the undersigned official.

As authorized by the Act, EPA developed regulations which identify uses for sewage sludge, including disposal; specify factors to be taken into account in determining measures and practices applicable to each such use or disposal; and identify concentrations of pollutants which interfere with each such use or disposal. 33 U.S.C. § 1345(d). The regulations have been in effect since 1993. All terms used in this Order are defined in the Act and/or EPA regulations. See, sections 212, 301, 309, 402, 405 and 502 of the Act, 33 U.S.C. §§ 1292, 1311, 1319, 1342, 1345 and 1362, and 40 C.F.R. parts 122 and 503.

FINDINGS OF FACT AND LAW

1. Respondent, the City of Westminster, is a city created by or under Colorado State law and is therefore a “municipality” within the meaning of section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 503.9(o), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(q) for purposes of federal enforcement.

2. Respondent owns and/or operates a Publicly Owned Treatment Works (hereinafter, the "Facility") as defined in 40 C.F.R. § 501.2, located in Westminster, Colorado, which is a "treatment works" as defined in Section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A), and 40 C.F.R. § 503.9(aa).
3. Section 405 of the Act, 33 U.S.C. § 1345, and the regulations found at 40 C.F.R. part 503, govern the disposal or use of sewage sludge.
4. Respondent is subject to section 405 of the Act, 33 U.S.C. § 1345, and 40 C.F.R. part 503, because it is a person who prepares sewage sludge, as defined at 40 C.F.R. § 503.9(w), and is an owner and/or operator of land application sites as defined at 40 C.F.R. 503.9(a).
5. The Facility is a "Class I sludge management facility" as defined in 40 C.F.R. § 503.9(c).
6. Treatment of domestic sewage at the Facility is composed of an extended aeration system followed by clarification and chlorination. Sewage sludge is further treated through anaerobic digestion of solids, which are belt pressed prior to land application.
7. Respondent generates sewage sludge during the treatment of domestic sewage in a treatment works and is, therefore, a "person who prepares sewage sludge" within the meaning of 40 C.F.R. § 503.9(r). 2
8. Section 405(d) of the Act, 33 U.S.C. § 1345(d) authorizes EPA to develop regulations that identify uses for sewage sludge, including disposal; specify factors to be taken into account in determining measures and practices applicable to each such use or disposal; and identify concentrations of pollutants which interfere with each such use or disposal.

9. Management practices described in 40 C.F.R. § 503.14(d) state that bulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.
10. EPA issued a general permit pursuant to Section 405(d) of the Act, 33 U.S.C. § 1345(b) and 40 C.F.R. Part 503, effective on August 16, 2002, for facilities in Colorado and Indian country that generate, treat, and/or use or dispose of sewage sludge by land application, landfill, and surface disposal.
11. Respondent applied for coverage under the General Biosolids Permit on November 12, 2002. Respondent was issued general permit number COG-650024, which became effective as of December 11, 2002 and will expire on August 16, 2007.
12. Part 4.1.4.6 of the General Biosolids Permit states that soil monitoring for nitrate-nitrogen is required for all land application sites where sewage sludge has been land applied during the life of this permit except when prior written approval is granted by the permit issuing authority.
13. Part 4.2.4 of the General Biosolids Permit requires that application of sewage sludge shall be conducted in a manner that does not exceed the agronomic rate for available nitrogen of the crops grown on the site unless prior written approval is given by the permit issuing authority.
14. On February 27, 2004, a county inspector met with Respondent for a general site inspection of land application site RW-23-1-320. At the time of inspection, over application of biosolids was not cited due to inaccurate soil sample results provided by

Respondent. Between January 1, 2004 and March 5, 2004, 250 dry tons were applied to 300 acres at site RW-23-1-320. Soil sample results dated December 18, 2003 provided on March 11, 2004 by Respondent for this land application site reported a nitrate nitrogen concentration of 25.2 mg/kg.

15. Reporting requirements for the General Biosolids Permit part 8.4 require that the permittee shall submit an annual report, by no later than February 19 of each year. The report shall include the results of all monitoring performed in accordance with parts 3.2, 4.1, 5.1, 6.1, and 7.1 of the permit and the required information on pathogen and vector attraction reduction requirements, management practices, land application sites, site restrictions, and the required signed certification statements. If no sewage sludge was generated, treated, and/or used/disposed of during the reporting period, "no sewage sludge was generated, treated, and/or used/disposed" shall be reported.
16. EPA received a revised biosolids annual report on May 4, 2004 dated April 20, 2004 from the City of Westminster to correct inaccuracies in its initial 2003 biosolids annual report dated February 19, 2004, which was received February 20, 2004. The information for biosolids production found in the initial annual report did not change with the revised version, but revisions were made to the land application information. No information was provided in either annual report for land application sites that had crop failure.
17. Part 4.2.9 of the General Biosolids Permit states if the planned crop is not grown or there is significant crop failure in the next available growing season after the application of sewage sludge, the annual report shall include the following information for that site:

- a) Crop grown;
 - b) Nitrogen requirements for crop grown;
 - c) Amount of nitrogen applied in sewage sludge; and
 - d) Results of agronomic rate calculations based on crop actually grown.
18. A memorandum from a county inspector dated March 11, 2004, recounts that Respondent stated that “last year’s crop (2003) was dryland corn, but the crop failed due to drought.”
19. Part 8.6.1 of the General Biosolids Permit requires the permittee to report any noncompliance, including transportation accidents spills, and uncontrolled runoff from sewage sludge transfer sites, storage sites, or land application sites, etc., which may seriously endanger health or the environment, as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances.

VIOLATIONS

Count 1

20. According to information supplied as part of Respondent’s revised annual Biosolids Report received on May 4, 2004, Respondent had over-applied biosolids to 5 land application sites in 2003 based on the total recommended nitrogen calculated by Respondent for these sites and the actual amount of nitrogen applied. An approximate 336.1 dry/tons were over-applied to the following locations: BS-34-1-160, BS-27-4-160, RW-22-1-320, CW-27-2-320 and CW-35-1-240.

21. Application of biosolids at a rate that exceeds the total recommended nitrogen calculated without prior written approval from the permit issuing authority is a violation of the General Biosolids Permit part 4.2.4, 40 C.F.R. § 503.14 (d) and Section 405(d) of the Act, 33 U.S.C. § 1345(d).

Count 2

22. The noncompliance detailed in Count 1, above, was not reported to the EPA within 24 hours from the time the Respondent first became aware of the circumstances.
23. Failure to report noncompliance with the requirements of the permit to the EPA is a violation of the General Biosolids Permit part 8.6.1.

Count 3

24. The biosolids application described in paragraph 14 represents an over application of biosolids to land application site RW-23-1-320 in 2004 of approximately 250 dry/tons.
25. Failure to cease land application of biosolids to site RW-23-1-320 or to receive written approval by the permit issuing authority for biosolids application is a violation of the General Biosolids Permit part 4.2.4, 40 C.F.R. § 503.14 (d) and Section 405(d) of the Act, 33 U.S.C. § 1345(d).

Count 4

26. The noncompliance detailed in Count 3, above, was not reported to the EPA within 24 hours from the time the Respondent first became aware of the circumstances.
27. Failure to report noncompliance with the requirements of the permit to the EPA is a violation of the General Biosolids Permit part 8.6.1.

Count 5

28. Crop failure information described in paragraph 18 for land application site RW-23-1-320 was not reported in either the initial annual report or the revised annual report submitted to the EPA.
29. Failure to report crop failure information to the EPA is a violation of the General Biosolids Permit part 4.2.9.

ORDER

Respondent is ordered to perform the following actions:

30. Within ten (10) days of receipt of this Order, Respondent shall give written notice to EPA of its intent to comply with the requirements of this Order.
31. Within thirty (30) days of the effective date of this Order, Respondents shall submit agronomic rate calculations (including all steps used for calculations and all required data) for all fields land applied to in 2002, 2003 and 2004. Calculations will be separated by application site and date, and include the following seven (7) categories:
 - a) Total available nitrogen from biosolids;
 - b) Nitrogen available in soil;
 - c) Nitrogen supplied from other commercial sources;
 - d) Total nitrogen available from existing sources;
 - e) Total nitrogen requirement of crop;
 - f) Supplemental nitrogen needed from biosolids; and
 - g) Agronomic loading rate (tons/acre).

Respondent shall also submit the actual loading rate applied to each field in tons/acre for land application sites in 2002, 2003 and 2004.

32. Within sixty (60) days of the effective date of this Order, Respondent shall submit a draft Biosolids Management Plan (Plan) that includes current biosolids practices and a 5-year biosolids operating plan. At a minimum, this plan will include the following:
 - a) A description of the plant processes used to create the sewage sludge;

- b) A description of the tracking parameters and operating procedures for the transportation of solids on site, as well as offsite;
- c) The location of all current and future land application sites including the distance from the property boundaries and from surface water and groundwater. Include the uses and impairments (if any) of the nearby surface and groundwater;
- d) A map of each land application site including buffer zones between biosolids application sites and: surface water, drinking water wells, drainage ditches, property lines, residences, schools, public roads and any necessary site-specific buffer zones for current sites;
- e) Site criteria that will be used when identifying new land application sites.
- f) A description of all Site management practices that will be employed to protect surface and groundwater at land application sites, this description shall include at a minimum: floodplain, slope, depth to groundwater, weather conditions appropriate for land application, soil conditions (compaction, permeability, saturated, frozen, snow-covered);
- g) A description of each and every method employed for disposal of biosolids (i.e., land application, surface disposal, incineration);
- h) A description of how public access will be restricted;
- i) Storage provision for biosolids during periods when biosolids cannot be land applied;
- j) A contingency plan that describes disposal options for any biosolids, which do not meet the requirements for land application, or exceeds storage capacity;
- k) Maximum acceptable biosolids application rate to assure that the amount applied does not exceed the nutrient requirements of the particular crop grown on the application site (agronomic rates) for current year crops, and operating procedures for making annual agronomic rate adjustments and for setting agronomic rates for future sites;
- l) A description of the pathogen treatment, vector attraction control, record keeping, monitoring, certifications, and notifications as required by the 40 C.F.R. part 503 regulations. Reference to applicable regulations (40 C.F.R. part 503) and procedures the Respondent intends to use to ensure that biosolids practices and limits outlined are followed;
- m) A sampling protocol for collecting representative samples;
- n) Public notice procedures and procedures for advance notice to EPA (at least 60 days) of proposed new land application sites;
- o) Procedures, or copies of documents specifying procedures (e.g., contracts) that will be used to ensure compliance with the General Biosolids Permit and applicable regulations if Respondent contracts with other entities for assistance in selection and/or management of the land application sites;
- p) A certified statement that the Respondent will comply with the Biosolids Management Plan, as approved by EPA; and
- q) A certified statement that the Plan will be amended to reflect any applicable practices or limits EPA promulgates pursuant to section 405 of the Act. The certification must be signed and dated by you or the person who is authorized by you to respond. A sample Statement of Certification is enclosed with this order.

33. EPA will review the draft Biosolids Management Plan. EPA may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments.
34. Upon receipt of a notice of disapproval or a request for a modification as described in paragraph 33 above, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan to address the draft Biosolids Management Plan for approval. Respondent shall have the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to paragraph 33 within fifteen (15) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to the Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA.
35. Within thirty (30) days following EPA approval, or approval with modifications, of the the draft Biosolids Management Plan, Respondent shall implement the approved document.

OTHER PROVISIONS

36. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim pursuant to these regulations for

information required to be submitted under this Order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the EPA may make the information available to the public without further notice to Respondent.

37. All written notices and reports required by this Order shall be sent to Aaron Urdiales of EPA, with a copy to Rick Koplitz of the Colorado Department of Public Health and Environment, at the following addresses:

Aaron Urdiales (8ENF-W-NP)
U.S. EPA Region VIII
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466

Rick Koplitz
Colorado Department of Public
Health and Environment
4300 South Cherry Creek Drive
Denver, CO

38. Respondent shall submit a written notice of compliance or non-compliance within fourteen (14) days following each schedule date listed in the Order. In the case of non-compliance, the notice shall include the cause for non-compliance and specify remedial actions being taken to comply.
39. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under the Clean Water Act, 33 U.S.C. §1319.
40. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's NPDES permit, which remains in full force and effect.

41. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Clean Water Act. Be advised that 33 U.S.C. §1319(d) authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act, while 33 U.S.C. §1319(c) authorizes fines and imprisonment for willful or negligent violations of the Clean Water Act.
42. Nothing in this Order shall be construed to preclude the institution of further action under sections 309(c), 309(d), or 309(g) of the Act for those violations cited herein or to relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII
Complainant.

Date: 9/1/04

SIGNED
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

In the Matter of: City of Westminster and the Big Dry Creek Reclamation Plant
Docket No.:

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Findings of Violation and Order for Compliance was sent to the following persons, in the manner specified, on the date below:

Original and One (1) Copy
Hand-carried and Filed:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

True Copy by Certified Mail
"Return Receipt Requested"
with the attached document:

Abel L. Moreno, Director of Public Works
City of Westminster
Public Works & Utilities
4800 West 92nd Avenue
Westminster, Colorado 80031

Certificate of Service

Date: 9/2/04

Andrea Reed

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON September 1, 2004.**